

1 A bill to be entitled
 2 An act relating to health care; providing a short
 3 title; providing definitions; providing a statement of
 4 public policy and findings relating to the federal
 5 Patient Protection and Affordable Care Act;
 6 prohibiting the state or its political subdivisions
 7 from implementing a health care exchange under the
 8 federal act or imposing any penalties that violate the
 9 public policy set forth in this act; prohibiting a
 10 health insurer from accepting remuneration that may
 11 result in the imposition of penalties contrary to the
 12 public policy set forth in this act; providing for
 13 suspension of a noncompliant insurer's license;
 14 prescribing duties of the Attorney General for
 15 enforcement of this act; providing an effective date.

16
 17 Be It Enacted by the Legislature of the State of Florida:

18
 19 Section 1. Florida Health Care Freedom Act.—

20 (1) SHORT TITLE.—This act may be cited as the "Florida
 21 Health Care Freedom Act."

22 (2) DEFINITIONS.—

23 (a) "Health care services" means the provision of any
 24 service, treatment, or product for the care of a physical or
 25 mental disease, illness, injury, defect, or condition or for
 26 maintenance or improvement of physical or mental health, subject
 27 to all laws and rules regulating health care service providers
 28 and products within the state.

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29 (b) "Mode of securing" means to purchase directly, on
30 credit, or by trade; to contract for third-party payment by
31 insurance or other legal means authorized by the state; to apply
32 for or accept employer-sponsored or government-sponsored health
33 care benefits under conditions legally required to receive such
34 benefits; or any combination thereof.

35 (c) "Penalty" means any civil or criminal fine, tax,
36 salary or wage withholding, surcharge, fee, or any other imposed
37 consequence established by law or rule of a government or its
38 subdivision or a state agency.

39 (3) STATEMENT OF PUBLIC POLICY.—

40 (a) The power to require or regulate a person's choice in
41 the mode of securing health care services or to impose a penalty
42 related thereto is not found in the United States Constitution
43 and is, therefore, a power reserved to the people pursuant to
44 the Ninth Amendment to the United States Constitution and to the
45 several states pursuant to the Tenth Amendment to the United
46 States Constitution. This state hereby exercises its sovereign
47 power to declare the public policy of the state regarding the
48 right of all persons residing in the state to choose the mode of
49 securing health care services.

50 (b) It is hereby declared that the public policy of the
51 state, consistent with its constitutionally recognized and
52 inalienable rights of liberty, is that every person in the state
53 is free to choose or decline to choose any mode of securing
54 health care services without penalty or threat of penalty.

55 (c) The policy stated in this act shall not be applied or
56 construed to impair any right of contract related to the

57 provision of health care services to any person or group.

58 (4) FINDINGS.—

59 (a) The federal Patient Protection and Affordable Care Act
60 preserves certain traditional state powers to regulate health
61 insurance and grants new powers to states that permit the state
62 to enforce the public policy set forth in this act in a manner
63 consistent with, and indeed expressly provided for by, federal
64 law.

65 (b) Sections 1311 and 1321 of the Patient Protection and
66 Affordable Care Act grant the state the option of operating a
67 health insurance exchange or allowing the Federal Government to
68 create an exchange. Section 1412 of the Patient Protection and
69 Affordable Care Act authorizes payments to health insurance
70 issuers that result directly or indirectly in penalties against
71 Florida employers and residents contrary to the public policy
72 set forth in this act. In certain cases, those penalties would
73 be levied against Florida employers and residents who refuse to
74 purchase health insurance that violates their deeply held
75 religious beliefs. Under the plain terms of Section 1401 of the
76 Patient Protection and Affordable Care Act, the payments that
77 result in penalties against Florida employers and residents
78 become available only if the state chooses to operate a health
79 insurance exchange. Facilitating these payments and the
80 enforcement of penalties against employers and individuals is a
81 key function of a state-run health insurance exchange. Section
82 1555 of the Patient Protection and Affordable Care Act protects
83 the right of health insurance issuers not to accept such
84 payments.

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85 (c) A final rule issued by the United States Internal
86 Revenue Service attempts to offer those payments and, therefore,
87 to penalize Florida employers and residents contrary to the
88 public policy set forth in this act, irrespective of whether the
89 state elects to operate a health insurance exchange. As such,
90 this rule would deny the state its power, granted by the United
91 States Congress, to enforce the public policy set forth in this
92 act by declining to operate a health insurance exchange. This
93 rule denies the sovereignty of the State of Florida and is
94 contrary to federal law and congressional intent.

95 (d) The Patient Protection and Affordable Care Act
96 recognizes the states' traditional powers to license and
97 regulate health insurance carriers. Section 1311(e) of the
98 Patient Protection and Affordable Care Act permits states that
99 operate health insurance exchanges to exclude certain health
100 plans. Section 1301(a) of the Patient Protection and Affordable
101 Care Act reserves for all states, regardless of whether they
102 operate a health insurance exchange, the power to exclude health
103 insurance issuers from participation if such issuers are not
104 "licensed and in good standing to offer health insurance
105 coverage in the state." Section 1321(d) of the Patient
106 Protection and Affordable Care Act, titled "No Interference With
107 State Regulatory Authority," expressly provides that the Patient
108 Protection and Affordable Care Act preempts only those state
109 laws "that ... prevent the application of the provisions of this
110 title." Section 1311(k) of the Patient Protection and Affordable
111 Care Act preempts only those state laws "that conflict with or
112 prevent the application of regulations promulgated by the

113 Secretary of the United States Department of Health and Human
114 Services."

115 (e) Paragraph (5) (b) asserts only those state powers that
116 the United States Congress has expressly recognized or granted
117 through the Patient Protection and Affordable Care Act.
118 Therefore, enforcement of paragraph (5) (b) does not conflict
119 with or prevent the application of any provisions of, or
120 regulations promulgated under, the Patient Protection and
121 Affordable Care Act.

122 (f) The Federal Government may, to the extent permitted by
123 the United States Constitution, amend federal law at any time to
124 preempt these powers that the Patient Protection and Affordable
125 Care Act reserves and grants to this state.

126 (5) ENFORCEMENT.—

127 (a) A public official, employee, or agent of this state or
128 any of its political subdivisions, or any law or rule, may not
129 act to impose, collect, enforce, or effectuate, directly or
130 indirectly, any penalty that violates the public policy set
131 forth in this act. Any such individual, law, or rule that acts
132 to implement the operation of a health insurance exchange under
133 the Patient Protection and Affordable Care Act violates the
134 public policy set forth in this act.

135 (b) If a health insurance issuer operating in this state
136 accepts any remuneration that may result in the imposition of
137 penalties contrary to the public policy set forth in this act,
138 the issuer's license to issue new business in the state shall be
139 suspended immediately until such time as the issuer represents
140 that it has returned that remuneration to its source and will

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141 decline any such future remuneration. Such a suspension shall
142 not be construed as impairing the right of contract.

143 (c) The Attorney General shall take action as provided in
144 section 2 in the defense or prosecution of rights protected
145 under this act.

146 Section 2. Duties of the Attorney General.—It is the duty
147 of the Attorney General to seek injunctive and any other
148 appropriate relief as expeditiously as possible to preserve the
149 rights and property of the residents of this state and to defend
150 as necessary the state and its officials, employees, and agents
151 in the event that any law or regulation violating the public
152 policy set forth in this act is enacted by any government or any
153 subdivision or agency thereof.

154 Section 3. This act shall take effect July 1, 2013.